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MUTUAL BENEFIT ASSOCIATION OF HAWAII

MEMORANDUM

February 25, 2002

TO: Rules Committee
Hawaii Employer-Union Health Benefits Trust Fund

FROM: Melvin M. Higa, Senior Vice President

SUBJECT: Communications From the Public

Re: Effective Date of EUTF Administrative Rules; Requirement to Distinguish Policies, Standards, and Procedures From Rules and Adoption of Policies, Standards, and Procedures Under Chapter 91 Required; and Compliance with Laws.

Act 88 2001 SLH provides that rules, policies, and procedures developed and issued by the board shall become effective on July 1, 2003. Accordingly, it is suggested that the committee consider recommending to the board that amendment to Act 88 deleting the mandated July 1, 2003 effective date for rules, policies, and procedures be submitted to the Legislature. The board should explain to the Legislature that the mandated July 1, 2003 effective date imposed in the current law is not only counter-productive to the efficient operation of the trust fund, but in substance also render any and all board attempts to implement the Act fruitless. Much valuable time and resources have already been consumed and needlessly wasted because of numerous legislated barriers contained in the measure enacted into law as Act 88 2001 SLH. That time already consumed and more time that will be consumed due to numerous legislated barriers cannot be recovered.

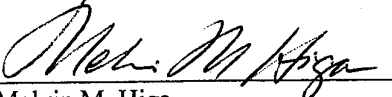
The Act permits the adoption of rules for the purposes of the chapter, rule-making procedures, and rules governing dispute resolution procedures in the event of impasse in decision-making, without regard to chapter 91. However, other than the foregoing adoption of rules, the board is not permitted to issue policies, standards, and procedures, without regard to chapter 91. This legislated barrier like the previously mentioned and many others not mentioned herein is counter-productive and need be eliminated.

The rules should include provisions requiring board to comply with Act 88 SLH 2001 and Trustees with sections 78-4 and 78-5, HRS.

These comments are similar to input made at February 19, 2202 board of trustees meeting. Copy of input is attached hereto.

Thank you for allowing us the opportunity to submit our input.

Respectfully submitted,


Melvin M. Higa

Cc: Administrative Committee, Re Amendments to Chapter 87A (Act 88 2001 SLH)

Hawaii Employer-Union Health Benefits Trust Fund
Questions and Comments – Melvin Higa

Agenda Item Unfinished Business Adoption of Interim Board
Operating Procedures:

A. General Comment. 87A-26(a) provides that the board may adopt rules and ***Rules shall be adopted without regard to chapter 91.*** 87A-26(b) provides that *The board may also issue policies, standards, and procedures consistent with its rules ---* without specifying that such policies, standards, and procedures are permitted to be issued without regard to chapter 91. Herein, the board is permitted to adopted ***Rules*** without regard to chapter 91. And, the board is **not** authorized to issue policies, standards, and procedures without regard to chapter 91. The terms “Rule”, “Policy”, “Standard”, and “Procedure” is not defined under 87A. Under chapter 91 “Rule” means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term does not include regulations concerning only the internal management of an agency and not affecting private rights of or procedures available to the public, nor does the term include declaratory rulings issued pursuant to section 91-8, nor intra-agency memoranda.

The board should clarify meaning of terms, before acting on “Adoption of Interim Board Operating Procedures.” Also, the board should consider that Act 88 SLH 2001, SECTION 6 (b) provides that issuance of rules, policies, and procedures shall become effective on July 1, 2003.

B. Specific Comments following numerical sequence to document dated January 17, 2002.

1. It may be appropriate to include that board of trustee meetings will comply with Act 88 SLH 2001.
2. It may be appropriate to include that all trustees will comply with applicable law concerning (a) conflicting duties, (b) inconsistent positions, and (c) common law relating to conflict of interests.
5. Voting procedures should include recording individual trustee votes for determining eligibility to move and second motions on reconsideration of actions (previously) taken. Further, because chapter 92 is operative at same

time as Act 88 SLH 2001 voting procedure on matters subject to chapter 92 should be included (approved by one vote from the employer trustees, one vote from the employee-benefit trustees, plus one trustee vote – total of seven votes to meet 2/3rds requirement).

7. There is likely questions as to chapter 92 permitting certain provisions being proposed in regards to Committees. The board may wish to consult with the Ethics Commission on this matter.
8. The board should consider addressing and including procedure whereby (a) should any (of these) provision conflict with Act 88 SLH 2001, the Act prevails; (b) board including its committees shall comply with all applicable laws.